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Sprint Nextel Corporation

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JODI ALLERTON, Individually and on behalf
of others similarly situated,

NOTICE OF REMOVAL OF ACTION

Plaintiffs,

SPRINT NEXTEL CORPORATION and
JOHN DOES I through XXX, actual names
and number unknown,

Defendants.

NOTICE OF REMOVAL

Defendant Sprint Nextel Corporation ("Sprint" or "Defendant"), by its attorneys, Lionel Sawyer & Collins, hereby files this Notice of Removal of the above-captioned action to the United States District Court for the District of Nevada from the Eighth Judicial District Court of Nevada, Clark County, where the action is now pending, pursuant to 28 U.S.C. §§ 1441 and 1446. In support of this Notice of Removal, Defendant now states:

1. The action was commenced on or about June 12, 2009, under Case No. A-09-592383-C in the Eighth Judicial District Court of Nevada, Clark County. Service of the Summons and Class Action Complaint was completed on June 22, 2009. Defendant filed its Answer to the Complaint on July 20, 2009. Pursuant to 28 U.S.C. §1446(a), a copy of all process, pleadings, and orders received by Defendant, as well as Defendant's Answer, is attached hereto as Exhibit 1. No further proceedings have been had herein.

2. This Notice of Removal has been filed within thirty days of service upon Defendant of a copy of the Class Action Complaint, pursuant to 28 U.S.C. §1446(b).

3. The State Court Action alleges claims for violation of the Fair Labor Standards Act, 29 U.S.C. § 216(b), for violation of Nevada's Labor Law, N.R.S. § 608.180, for breach of contract under Nevada law, and for violation of N.R.S. § 608.040. (*See* Ex. 1.)

4. This is a civil action over which this Court has original "federal question" jurisdiction pursuant to 28 U.S.C. § 1331, as well as original jurisdiction due to diversity of citizenship pursuant to 28 U.S.C. § 1332. Therefore, this civil action may be removed to this Court pursuant to the provisions of 28 U.S.C. §1441(a) and (b).

FEDERAL QUESTION JURISDICTION AND REMOVAL
(28 U.S.C §§ 1331, 1441, 1446)

5. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff Jodi Allerton ("Allerton") asserts in her Class Action Complaint a cause of action under a federal statute: the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* As a civil action founded on a right or claim arising under the laws of the United States, this action is properly removal to this Court pursuant to 28 U.S.C. § 1441(a) and (b).

6. This Court may exercise supplemental jurisdiction over the related state law causes of action in the Class Action Complaint pursuant to 28 U.S.C. § 1367, as the state law causes of action are related to the FLSA claim by subject matter, time period, and/or alleged action.

DIVERSITY JURISDICTION AND REMOVAL
(28 U.S.C §§ 1332, 1441, 1446)

7. In addition, this Court has original jurisdiction under 28 U.S.C. § 1332, and the action may be removed to this Court pursuant to 28 U.S.C. § 1441(b) because it is a civil action

1 between citizens of different states and the matter in controversy exceeds the sum of \$75,000,
2 exclusive of interest and costs.

3 8. In accordance with the requirements of 28 U.S.C. § 1332(c)(1), complete
4 diversity of the parties exists and is shown on the face of the Complaint, as follows:

- 5 A. In her Complaint, Allerton alleges that she is a resident of Clark County
6 Nevada. (*See* Ex. 1, ¶ 1.) Thus, Sprint is informed and believes and on
7 that basis alleges that Allerton was at the time of the filing of this action
8 and still is a citizen of the State of Nevada.
- 9 B. As alleged in the Complaint, Sprint is a corporation incorporated under the
10 laws of the State of Kansas. (*See* Ex. 1, ¶ 2.) In addition, Sprint's
11 principal place of business is 200 Sprint Parkway, Overland Park, Kansas
12 66251. As a result, Sprint is a citizen of Kansas, but not of Nevada, and
13 was neither incorporated nor had its principal place of business in Nevada.
- 14 C. Although Allerton has named as defendants "John Does 1 through XXX,
15 actual names and numbers unknown," the citizenship of defendants sued
16 under fictitious names is to be disregarded for the purposes of determining
17 diversity. *See* 28 U.S.C. § 1441(a).

18 9. In the Complaint, Allerton seeks an unspecified amount of damages for a series of
19 alleged wage and hour violations, as follows:

- 20 A. Under the first claim for relief pursuant to 29 U.S.C. § 216(b) of the
21 FLSA, Allerton alleges that Sprint "willfully failed to make said overtime
22 and/or minimum wage payments by having the plaintiff . . . perform 'off
23 the clock' work." (Ex. 1, ¶ 14.) As recovery for this claim, Allerton seeks
24 "a judgment against defendants for unpaid overtime wages and/or
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1 minimum wages, such sums to be determined by an accounting of the
2 hours worked by, and wages actually paid to, such plaintiffs, and also
3 seeks an award of liquidated damages, attorney's fees, interest and costs as
4 provided for by the FLSA." (Ex. 1, ¶ 16.)

5
6 B. Under the second claim for relief pursuant to Nevada's labor law, Allerton
7 alleges that she and other alleged similarly situated employees were not
8 paid required wages of time and one-half their normal hourly rate for
9 hours worked in excess of 8 hours a day or 40 hours a week. (Ex. 1, ¶ 19.)
10 As recovery for this claim, Allerton seeks "a judgment against defendant
11 for overtime wages, such sums to be determined by an accounting of the
12 hours worked by, and wages actually paid to, the plaintiff and those
13 similarly situated, and also seeks an award of attorney's fees, interest and
14 costs, and suitable equitable relief, as provided for by Nevada Law." (Ex.
15 1, ¶ 21.)

16
17 C. Under the third claim for relief for breach of contract, Allerton alleges
18 Sprint breached an alleged contract with her "by failing to pay such
19 promised hourly wages, specifically by failing to pay the plaintiff anything
20 whatsoever for certain hours or portions thereof that she performed work
21 for the defendant." (Ex. 1, ¶ 25.) As recovery for this claim, Allerton
22 seeks "a judgment against defendant for the unpaid wages owed to the
23 named plaintiff . . . as a result of the defendants' breach of its contract
24 with the plaintiff . . . and also seeks an award of attorney's fees, interest
25 and costs, as provided for by Nevada Law." (Ex. 1, ¶ 26.)
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D. Under the fourth claim for relief under N.R.S. § 608.040, Allerton alleges Sprint failed to pay her and other allegedly similarly situated individuals earned but unpaid wages at the time of their discharge or resignation. (Ex. 1, ¶¶ 28-29.) As recovery for this claim, Allerton seeks “a judgment against the defendants for the penalty prescribed by Nevada Revised Statutes § 608.040, to wit, for a sum equal to thirty days wages, along with interest, costs and attorney’s fees.” (Ex. 1, ¶ 30.)

10. Thus, although Allerton has not specified the precise amount of damages sought, it is clear from the face of the Complaint that she seeks damages for alleged unpaid overtime wages, alleged unpaid minimum wages, alleged unpaid wages, statutory penalties under Nevada law, including a sum equal to thirty (30) days’ wages, liquidated damages under the FLSA, suitable equitable relief, and attorney’s fees. (See Ex. 1 ¶¶ 16, 21, 26, 30.) In addition, Allerton seeks “such other relief as the Court deems just.” (Ex. 1, at 8-9.)

11. The nature of the numerous wage and hour claims she attempts to plead, the penalties she seeks, and the attorney’s fees sought reveals that the amount in controversy “more likely than not” exceeds the jurisdictional minimum of \$75,000. See *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 698 (9th Cir. 2007) (affirming district court’s determination that, on a preponderance of evidence standard, defendant had successfully established that amount in controversy exceeded \$75,000 despite plaintiffs’ allegations to the contrary); see also *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996) (holding that defendant must demonstrate by a preponderance of the evidence that the amount in controversy is met where state-court complaint unclear or ambiguous as to amount in controversy).

12. The removing defendant may make the requisite showing by either (1) demonstrating that it is “facially apparent” from the complaint that the claims are likely to

1 exceed \$75,000 (*e.g.*, claims of punitive damages, claims entitling plaintiff to recovery attorneys'
2 fees, etc.), or (2) setting forth facts in the notice of removal that support a finding of the requisite
3 amount under a preponderance of evidence standard. *See, e.g., Lockett v. Delta Airlines, Inc.*,
4 171 F.3d 295, 298 (5th Cir. 1999); *Guglielmino*, 506 F.3d at 699 (citing *Sanchez*, 102 F.3d at
5 404).

6
7 13. Here, Defendant's burden of proof is met because it is "facially apparent" from
8 Allerton's four claims for relief, premised on her laundry list of alleged wage and hour
9 violations, her claims for civil penalties, liquidated damages, and equitable relief, and her claim
10 for attorney's fees, that, more likely than not, the jurisdictional amount is exceeded even though
11 the Complaint fails to allege a specific amount of damages. *See Guglielmino*, 506 F.3d at 700
12 ("[W]here an underlying statute authorizes an award of attorneys' fees, either with mandatory or
13 discretionary language, such fees may be included in the amount in controversy") (quoting
14 *Lowdermilk v. U.S. Bank Nat'l Ass'n*, 479 F.3d 994, 1000 (9th Cir. 2007)); *see also Bell v.*
15 *Preferred Life Assurance Soc'y*, 320 U.S. 238, 241 (1943) (amount in controversy requirement
16 met if plaintiff "might recover" award of compensatory and punitive damages in excess of
17 amount in controversy requirement); *Jackson v. Am. Bankers Ins. Co. of Fla.*, 976 F. Supp. 1450,
18 1454 (S.D. Ala. 1997) (appropriate measure of amount in controversy is the litigation value
19 assuming all allegations of complaint are true and jury returns verdict for plaintiffs on all claims
20 made in the complaint).

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23 14. In addition, while Sprint vehemently denies Allerton's allegations, including that
24 Allerton is entitled to any monetary relief, penalties or equitable relief whatsoever, Allerton's
25 purported claims for damages exceed \$75,000 based on *Guglielmino* and the other cases cited
26 herein as follows:
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- 1 A. Allerton was employed by Sprint from November 5, 2007 through March
2 12, 2009. (*See* Affidavit of Taylor Kitchin, attached hereto as Exhibit 2.)
3 Upon her departure, Allerton's hourly wage was \$12.8625. (*Id.*) During
4 her employment with Sprint, Allerton worked, on average, 42.88 hours per
5 week, including paid time off. (*Id.*) Thus, on average, Allerton clocked
6 2.88 of overtime hours per week.
- 7
- 8 B. Under the first claim for relief, Allerton seeks damages for Sprint's
9 alleged failure to pay her for time she worked "off the clock." Pursuant to
10 the FLSA, Allerton's wage claims date back two (2) years from the date
11 she filed this Complaint. *See* 29 U.S.C. § 255(a). Because Allerton filed
12 her Complaint on June 12, 2009, her FLSA claims date back to June 12,
13 2007 – *i.e.*, prior to the date her employment with Sprint began. Even
14 assuming, on average, that Allerton worked three (3) unpaid hours of
15 overtime per week during her employment with Sprint, which was 70.57
16 weeks, at \$12.8625/hour, damages for such a violation would equal
17 \$4084.68 (70.57 weeks x [\$12.8625/hour x 3 hours x 1.5]). With
18 liquidated damages, damages for a this period would equal \$8169.36.
- 19
- 20 C. Under the second claim for relief, Allerton seeks overtime wages for time
21 she allegedly worked "off the clock" and for time in which Sprint
22 allegedly improperly calculated overtime wages. Pursuant to Nevada law,
23 such claims have a three-year statute of limitations. N.R.S.
24 § 11.190(3)(a). Again, assuming that Allerton worked three (3) hours of
25 unpaid overtime per week during her employment with Sprint, damages
26
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1 for a three-year time period (which includes all 70.57 weeks of Allerton's
2 employment with Sprint) would equal \$4084.68.

3 D. Under the third claim for relief, Allerton alleges that Sprint breached a
4 contract to pay certain set hourly wages when it failed to pay her for "off
5 the clock" work. Pursuant to Nevada law, breach of contract claims have
6 a six-year statute of limitations. N.R.S. § 11.190(1)(b). Assuming that
7 Allerton worked three (3) hours of unpaid overtime per week during her
8 employment with Sprint, damages for a six-year time period (which
9 includes all 70.57 weeks of Allerton's employment with Sprint) would
10 equal \$4084.68.

11
12 E. Under the fourth claim for relief, Allerton seeks a sum equal to thirty days
13 of her wages pursuant to N.R.S. § 608.040. Thirty days of Allerton's
14 wages is equal to \$3087.00.

15
16 F. Finally, Allerton seeks attorney's fees, and both the FLSA, 29 U.S.C.
17 § 216(b), and Nevada state law, N.R.S. § 608.140, provide for the award
18 of attorney's fees to a successful litigant. Under such circumstances, the
19 amount claimed thereunder may be taken into account in determining
20 whether the jurisdictional minimum has been reached. *See, e.g., Galt G/S*
21 *v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998). A consideration
22 of Allerton's attorney's fees that would be recoverable in the event she
23 prevails further demonstrates that the amount in controversy more likely
24 than not exceeds the \$75,000 threshold.

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26 G. Allerton's claims for attorney's fees would conservatively increase this
27 number by at least an additional \$60,000. Plaintiff purports to bring
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1 claims on behalf of herself and other alleged “similarly situated”
2 individuals under both federal and state laws for the underpayment of or
3 failure to pay wages. In addition, Allerton seeks penalties for failure to
4 pay wages upon discharge or resignation. Thus, the litigation will
5 encompass numerous closely-contested claims asserted on behalf of
6 numerous current and former employees and will almost certainly result in
7 extensive litigation activity, particularly because the bulk of Allerton’s
8 claims allege “off the clock” work that will be difficult to quantify by
9 record evidence. Based on defense counsel’s experience litigating similar
10 claims, it is more likely than not that Allerton’s attorney’s fees will be at
11 least \$60,000.
12

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14 15. Therefore, the Court has original jurisdiction over the Complaint, and each
15 alleged cause of action contained therein, under 28 U.S.C. § 1332. The Complaint and the State
16 Court Action may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441.

17 16. Allerton also has named as defendants “John Does 1 through XXX, actual names
18 and numbers unknown.” Thus far, to Sprint’s knowledge, none of the John Doe defendants has
19 been served. In any event, the citizenship of defendants sued under fictitious names is to be
20 disregarded for the purposes of determining diversity. *See* 28 U.S.C. § 1441(a).
21

22 17. Pursuant to 28 U.S.C. § 1441(a), Defendant has the right to remove this case from
23 the Eighth Judicial District Court of Nevada, Clark County, to this Court because the District
24 Court for the District of Nevada is the District embracing the place where the action is pending.

25 18. A copy of this Notice of Removal will be filed with the Clerk of the Eighth
26 Judicial District Court of Nevada, Clark County, as required by 28 U.S.C. § 1446(d).
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1 19. Promptly after the filing of this Notice of Removal, written notice of the filing of
2 this Notice of Removal will be given to Allerton as required by law. *See* 28 U.S.C. § 1446(d).

3 20. By filing this Notice of Removal, Defendant does not waive any defenses which
4 may be available to it.

5 21. In the event this Court should have any questions about the propriety of removal
6 or may be inclined to remand this action, Defendant respectfully requests that the Court issue an
7 order to show cause why the case should not be remanded, affording the parties an opportunity to
8 provide the Court with full briefing and argument. Furthermore, should Allerton voluntarily
9 withdraw her first claim of relief pursuant to the FLSA, 29 U.S.C. § 216(b) and move to remand
10 this case to the state court, she should be required to stipulate that her damages shall not exceed
11 \$75,000. Such a procedure is warranted since a remand order is not subject to review.
12

13 22. This Notice is executed pursuant to Federal Rule of Civil Procedure 11.
14

15 WHEREFORE, Defendant hereby removes this action from the Eighth Judicial District
16 Court of Nevada, Clark County, to the United States District Court for the District of Nevada.

17 Dated: July ⁵⁺21, 2009

LIONEL SAWYER & COLLINS

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19
20 By:



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Attorneys for Defendant
Sprint Nextel Corporation

CERTIFICATE OF MAILING

I certify that on the 21st day of July, 2009, I deposited a true and correct copy of the above **NOTICE OF REMOVAL OF ACTION** in the United States mail, postage prepaid at Las Vegas, Nevada, to the last known address of:

Leon Greenberg, Esq.
Leon Greenberg Professional Corporation
633 South 4th Street, Suite 4
Las Vegas, Nevada 89101

Christian Gabroy, Esq.
Gabroy Law Offices
170 S. Green Valley Parkway, Suite 280
Henderson, Nevada 89012

Attorneys for Plaintiffs


An Employee of LIONEL SAWYER & COLLINS

EXHIBIT 1

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Sprint Nextel Corporation

FILED
JUL 20 5 03 PM '09
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

JODI ALLERTON, Individually and on behalf
of others similarly situated,

Plaintiffs,

SPRINT NEXTEL CORPORATION and
JOHN DOES I through XXX, actual names
and number unknown,

Defendants.

Case No. A-09-592383-C
Department X

**DEFENDANT SPRINT NEXTEL
CORPORATION'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Defendant Sprint Nextel Corporation ("Sprint or "Defendant"), for its answer and affirmative defenses to Plaintiff Jodi Allerton's ("Plaintiff" or "Allerton") Class Action Complaint for alleged Violation of State and Federal Statutes and Breach of Contract (the "Complaint"), states as follows:

AS TO "PARTIES AND PRELIMINARY STATEMENT"

1. Upon information and belief, admits the allegations contained in Paragraph 1 of the Complaint.

2. Denies each and every allegation contained in Paragraph 2 of the Complaint, except admits that Sprint is a corporation existing and established pursuant to the laws of the State of Kansas.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint.

4. The allegations contained in Paragraph 4 of the Complaint constitute a legal assertion that Defendant is not required to admit or to deny. To the extent a response is required, Defendant denies each and every allegation contained in Paragraph 4 of the Complaint.

5. Denies each and every allegation contained in Paragraph 5 of the Complaint.

6. The allegations contained in Paragraph 6 of the Complaint constitute a legal assertion that Defendant is not required to admit or to deny. To the extent a response is required, Defendant denies each and every allegation contained in Paragraph 6 of the Complaint.

AS TO "THE PROPOSED CLASS CLAIMS AND PARTIES"

7. Denies each and every allegation contained in Paragraph 7 of the Complaint.

8. Denies each and every allegation contained in Paragraph 8 of the Complaint.

9. Denies each and every allegation contained in Paragraph 9 of the Complaint.

10. Denies each and every allegation contained in Paragraph 10 of the Complaint.

11. Denies each and every allegation contained in Paragraph 11 of the Complaint.

12. Denies each and every allegation contained in Paragraph 12 of the Complaint.

AS TO "A FIRST CLAIM FOR RELIEF ON BEHALF OF
PLAINTIFF JODI ALLERTON AND ALL OTHER PERSONS
WHO CHOOSE TO FILE A WRITTEN CONSENT TO JOIN
THIS ACTION AS A PLAINTIFF PURSUANT TO 29 U.S.C.
§ 216(b) OF THE FAIR LABOR STANDARDS ACT"

13. Denies each and every allegation contained in Paragraph 13 of the Complaint, except admits that Allerton purports to bring the First Claim for Relief pursuant to 29 U.S.C. § 216(b) on behalf of herself and all other alleged similarly situated persons who consent in writing to join this action as plaintiffs pursuant to 29 U.S.C. § 216(b).

1 14. Denies each and every allegation contained in Paragraph 14 of the Complaint,
2 except admits that certain provisions of the FLSA entitle employees to a minimum wage and an
3 overtime hourly wage of time and one-half of their regular hourly wage for all hours worked in
4 excess for forty hours per work, and that Allerton was employed by Sprint in a telephone
5 customer call service center.
6

7 15. Denies each and every allegation contained in Paragraph 15 of the Complaint.

8 16. Denies each and every allegation contained in Paragraph 16 of the Complaint,
9 except admits that Allerton, on behalf of herself and all other alleged similarly situated plaintiffs
10 who consent in writing to join this action, purports to seek a judgment against Defendant for
11 alleged unpaid overtime wages and/or minimum wages, an award of liquidated damages,
12 attorney's fees, interest, and costs as provided for by the FLSA.
13

14 AS TO "A SECOND CLAIM FOR RELIEF ON BEHALF
15 OF PLAINTIFF JODI ALLERTON AND ALL PERSONS
16 SIMILARLY SITUATED PURSUANT TO NEVADA'S LABOR
17 LAW"

18 17. Defendant repeats and realleges its answers to Paragraphs 1 through 16 as if set
19 forth in full herein in response to Paragraph 17 of the Complaint.

20 18. Denies each and every allegation contained in Paragraph 18 of the Complaint,
21 except admits that Allerton purports to bring the Second Claim for Relief pursuant to NRS
22 § 608.180.

23 19. Denies each and every allegation contained in Paragraph 19 of the Complaint,
24 except admits that NRS § 608.018 governs compensation for overtime.

25 20. Denies each and every allegation contained in Paragraph 20 of the Complaint.

26 21. Denies each and every allegation contained in Paragraph 21 of the Complaint,
27 except admits that Allerton, on behalf of herself and the proposed plaintiff class members,
28

purports to seek a judgment against Defendant for alleged overtime wages, attorney's fees, interest, costs, and suitable equitable relief, as provided for by Nevada Law.

AS TO "A THIRD CLAIM FOR RELIEF ON BEHALF OF PLAINTIFF JODI ALLERTON AND ALL PERSONS SIMILARLY SITUATED UNDER NEVADA LAW FOR BREACH OF CONTRACT"

22. Defendant repeats and realleges its answers to Paragraphs 1 through 21 as if set forth in full herein in response to Paragraph 22 of the Complaint.

23. Denies each and every allegation contained in Paragraph 23 of the Complaint, except admits that Allerton purports to bring the Third Claim for Relief for breach of contract under Nevada Law.

24. Denies each and every allegation contained in Paragraph 24 of the Complaint.

25. Denies each and every allegation contained in Paragraph 25 of the Complaint.

26. Denies each and every allegation contained in Paragraph 26 of the Complaint, except admits that Allerton, on behalf of herself and the proposed plaintiff class members, purports to seek a judgment against Defendant for alleged unpaid wages, attorney's fees, interest, costs, and suitable equitable relief, as provided for by Nevada Law.

AS TO "A [FOURTH (ERRONEOUSLY PLEAD AS THIRD)] CLAIM FOR RELIEF ON BEHALF OF PLAINTIFF JODI ALLERTON AND ALL PERSONS SIMILARLY SITUATED UNDER N.R.S. § 608.040"

27. Defendant repeats and realleges its answers to Paragraphs 1 through 26 as if set forth in full herein in response to Paragraph 27 of the Complaint.

28. Denies each and every allegation contained in Paragraph 28 of the Complaint, except admits that Allerton was discharged from Sprint.

29. Denies each and every allegation contained in Paragraph 29 of the Complaint.

30. Denies each and every allegation contained in Paragraph 30 of the Complaint, except admits that Allerton, on behalf of herself and alleged similarly situated members of the

1 proposed plaintiff class, purports to seek a judgment against Defendant for the penalty prescribed
2 by Nevada Revised Statutes § 608.040, attorney's fees, interest, and costs.

3
4 **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

5 31. The Complaint fails, in whole or in part, to state a claim upon which relief can be
6 granted or for which the damages sought may be awarded.

7
8 **AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

9 32. Plaintiff's claims are barred, in whole or in part, by the applicable statute of
10 limitations.

11
12 **AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

13 33. Plaintiff did not suffer any damages attributable to any actions of Defendant.

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15 **AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

16 34. Plaintiff is not entitled to liquidated damages because of Defendant's good faith
17 belief that its actions did not violate the FLSA and because Defendant's conduct was not willful.

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19 **AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

20 35. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver,
21 release, settlement and compromise.

22
23 **AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

24 36. Plaintiff's claims are barred, in whole or in part, by the doctrines of laches,
25 estoppel, and unclean hands.

26
27 **AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

28 37. Plaintiff's claims are barred, in whole or in part, by failure of consideration.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

38. Plaintiff's claims are barred in whole or in part, by the Statute of Frauds.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

39. Neither Plaintiff, the putative class nor the class asserted herein, the existence of which is expressly denied, meet the requirements of Nev. R. Civ. P. 23 or Fed. R. Civ. P. 23.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

40. The named Plaintiffs fail to satisfy the prerequisites for class certification and, therefore, lack standing and cannot represent the interests of others as to each of the purported causes of action.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

41. Plaintiff is an inadequate representative of the alleged class of persons which Plaintiff purports to represent, the existence of which is expressly denied.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

42. The members of the putative class, the existence of which is expressly denied, are not "similarly situated" to each other or to Plaintiff.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

43. Plaintiff and the putative class, the existence of which is expressly denied, cannot satisfy the prerequisites of 29 U.S.C. § 216(b).

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AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

44. Defendant has the right of recoupment and/or setoff against Plaintiff and each putative class member, the existence of which are expressly denied, who received compensation for hours they did not work and were not otherwise entitled to receive pay.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

45. Plaintiff's and the putative class members' claims, the existence of which is expressly denied, are barred, in whole or in part, by the doctrine of unjust enrichment.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

46. Plaintiff's claims are barred, in whole or in part, by the doctrine of payment.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

47. Plaintiff's claim for damages is barred by accord and satisfaction in that Plaintiff has already received full payment of all monies due.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

48. Defendant reserves the right to raise additional affirmative defenses as may be discovered during the course of these proceedings.

WHEREFORE, Defendant respectfully requests that this Court:

- a. Dismiss Plaintiff's Complaint in its entirety, with prejudice;
- b. Deny each and every prayer for relief contained in Plaintiff's Complaint;
- c. Award Defendant its reasonable attorneys' fees and legal expenses;
- d. Award Defendant its costs and disbursements incurred in defense of this action; and

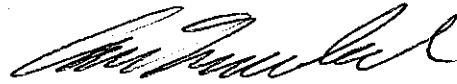
///

e. Award Defendant any other relief the Court deems just and proper.

Dated: July __, 2009

LIONEL SAWYER & COLLINS

By:



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Attorneys for Defendant
Sprint Nextel Corporation

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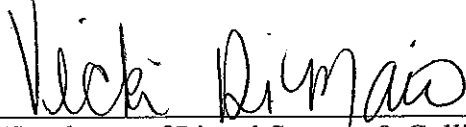
CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of July, 2009, I deposited a true and correct copy of the above and forgoing **DEFENDANT SPRINT NEXTEL CORPORATION'S ANSWER TO PLAINTIFF'S COMPLAINT** in the United States Mail, postage prepaid at Las Vegas, Nevada, to the last know address of:

Leon Greenberg, Esq.
Leon Greenberg Professional Corporation
633 South 4th Street, Suite 4
Las Vegas, Nevada 89101

Christian Gabroy, Esq.
Gabroy Law Offices
170 S. Green Valley Parkway, Suite 280
Henderson, Nevada 89012

Attorneys for Plaintiffs


An Employee of Lionel Sawyer & Collins

ORIGINAL

FILED

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1 COMP

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 3 MARK R. THIERMAN, ESQ. NSB#: 8285
 4 Leon Greenberg Professional Corporation
 5 633 South 4th Street - Suite 4
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6 CHRISTIAN GABROY, ESQ. NSB#: 8805
 7 Gabroy Law Offices
 8 170 S. Green Valley Parkway - Suite 280
 Henderson Nevada 89012
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 (702) 259-7704 (fax)

9 Attorneys for Plaintiffs

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13
 14 JODI ALLERTON, Individually
 15 and on behalf of others
 similarly situated,

16 Plaintiffs,

17 vs.

18 SPRINT NEXTEL CORPORATION and
 19 JOHN DOES I through XXX,
 20 actual names and number
 unknown,

21 Defendants.

A09-592383-C

Case No.:

Dept. No.:

ARBITRATION EXEMPTION
 CLAIMED BECAUSE THIS IS A
 CLASS ACTION CASE

A-09-592383-C
188429

23
 24 CLASS ACTION COMPLAINT FOR VIOLATION
 25 OF STATE AND FEDERAL STATUTES AND BREACH OF CONTRACT

26 COMES NOW Plaintiffs, JODI ALLERTON, Individually and on
 27 behalf of others similarly situated, by and through her attorney,
 28 Leon Greenberg Professional Corporation, Mark Thierman and Christian

CLERK OF THE COURT

JUN 12 2009

RECEIVED

10

1 Gabroy, as and for a Complaint for Violation of State and Federal
2 Statutes and Breach of Contract and Damages alleges as follows:

3
4 PARTIES AND PRELIMINARY STATEMENT

5 1. The plaintiff is a resident of Clark County, Nevada, and
6 current employee of the defendant.

7 2. The defendant SPRINT NEXTEL CORPORATION ("Sprint") is a
8 corporation existing and established pursuant to the laws of the
9 State of Kansas and conducts business in Nevada either directly or
10 through one of the other JOHN DOE defendants as its agent or alter
11 ego.

12 3. The defendants JOHN DOES I through XXX, actual names
13 and number unknown, are one or more entities that are claimed to
14 be liable, as a matter of law, for the various violation of statute,
15 and breach of contract, claims made by the plaintiffs herein, and
16 when such entities are properly identified it is intended that they
17 will be named as defendants in this case under their proper names,
18 such entities upon information and belief being wholly controlled
19 subsidiaries or operating arms of the defendant Sprint.

20 4. This Court has jurisdiction over the claims presented on
21 the First Claim for Relief herein pursuant to 29 U.S.C. §§ 201-219,
22 known as the Fair Labor Standards Act ("the FLSA") and specifically
23 under the provisions of 29 U.S.C. § 216(b).

24 5. The acts complained of herein took place in Nevada, and
25 primarily in Clark County.

26 6. The defendants engage in for-profit businesses which have
27 gross revenue in excess of \$500,000 per annum and are engaged in the
28 production of goods for interstate commerce and/or the use and/or

1 handling of goods which have moved in interstate commerce as such
2 terms are defined in the FLSA and are employers subject to the
3 jurisdiction of the FLSA.

4
5 THE PROPOSED CLASS CLAIMS AND PARTIES

6 7. There are numerous persons who are similarly situated to
7 the named plaintiff in respect to the named plaintiff's claims under
8 Nevada Law, in that such similarly situated persons, like the named
9 plaintiff, performed substantial work, labor and services for the
10 defendants and did not receive the compensation required by the
11 various Nevada Statutes alleged herein, and/or failed to receive the
12 compensation required by their contracts of employment and as
13 detailed hereafter such circumstances warrant the granting of class
14 certification on such State Law claims of the plaintiff pursuant to
15 N.R.C.P. Rule 23.

16 8. That the persons similarly situated to the named plaintiff
17 and described in paragraph 7 constitute a class of persons that are
18 so numerous that joinder of all such persons individually is
19 impractical, such class consisting of all hourly wage earners of the
20 defendants who were injured by the defendant's violations of
21 Nevada's statutes, and defendant's breach of contract, that are
22 detailed herein.

23 9. There are questions of law and fact common to the plaintiff
24 class that predominate over any questions affecting only individual
25 members of the plaintiff class, specifically whether the defendant
26 has any legal obligation to the class members under Nevada Law and
27 if so what is the extent of such obligation.

28 10. The claims of the named plaintiff are typical of the

1 claims of the above described plaintiff class, in that the interests
2 of the named plaintiff are co-extensive with the interests of the
3 other members of the plaintiff class, there is a lack of adverse
4 interests between the named plaintiff and the other members of the
5 plaintiff class, and common questions of law and fact exist as to
6 the claims of the named plaintiff and the claims of the members of
7 the plaintiff class.

8 11. The named plaintiff will fairly and adequately protect the
9 interests of the plaintiff class and serve as an adequate
10 representative plaintiff on behalf of the plaintiff class.

11 12. A class action pursuant to N.R.C.P. Rule 23 is superior
12 to other available methods for the fair and efficient adjudication
13 of the plaintiff class members' claims under Nevada Law.

14 AS AND FOR A FIRST CLAIM FOR RELIEF ON
15 BEHALF OF PLAINTIFF JODI ALLERTON AND
16 ALL OTHER PERSONS WHO CHOOSE TO FILE A
17 WRITTEN CONSENT TO JOIN THIS ACTION AS
18 A PLAINTIFF PURSUANT TO 29 U.S.C. §
19 216(b) OF THE FAIR LABOR STANDARDS ACT

20 13. The plaintiff JODI ALLERTON ("the named plaintiff")
21 brings this First Claim for Relief pursuant to 29 U.S.C. § 216(b) on
22 behalf of herself and all other similarly situated persons who
23 consent in writing to join this action as plaintiffs pursuant to 29
24 U.S.C. § 216(b), and upon information and belief there are numerous
25 such similarly situated persons.

26 14. Pursuant to the applicable provisions of the FLSA,
27 including but not limited to 29 U.S.C. § 206 and § 207, the
28 plaintiff was entitled to a minimum wage and an overtime hourly wage
of time and one-half her regular hourly wage for all hours worked in

1 excess of forty hours per week, the defendant employed the
2 plaintiff, the plaintiff worked more than 40 hours per week for the
3 defendant in the defendant's telephone customer call service center
4 and defendant willfully failed to make said overtime and/or minimum
5 wage payments by having the plaintiff and its other similarly
6 situated employees perform "off the clock" work that the time
7 consumed performing was neither recorded by the defendant nor paid
8 by the defendant, but such amounts of time, although typically small
9 in amount each work day, were constant and cumulatively
10 considerable.

11 15. Defendant's failure to pay the plaintiff her proper wages
12 as required under the FLSA arose from the following circumstance:

13 (a) The plaintiff was required to work for certain periods
14 of time during which he was paid nothing at all.

15 16. The named plaintiff on behalf of herself and all other
16 similarly situated plaintiffs who consent in writing to join this
17 action, seek, on this First Cause of Action, a judgment against
18 defendants for unpaid overtime wages and/or minimum wages, such sums
19 to be determined based upon an accounting of the hours worked by,
20 and wages actually paid to, such plaintiffs, and also seeks an award
21 of liquidated damages, attorney's fees, interest and costs as
22 provided for by the FLSA.

23
24 AS AND FOR A SECOND CLAIM FOR RELIEF
25 ON BEHALF OF PLAINTIFF JODI ALLERTON
26 AND ALL PERSONS SIMILARLY SITUATED
PURSUANT TO NEVADA'S LABOR LAW

27 17. Plaintiff repeats and reiterates each and every allegation
28 previously made herein.

1 18. The named plaintiff brings this Second Claim for Relief
2 against the defendant pursuant to NRS § 608.180 for non-payment of
3 overtime wages on behalf of herself and the proposed plaintiff class
4 members.

5 19. Pursuant to NRS § 608.018 plaintiffs were also entitled
6 to the payment of wages at time and one-half their normal hourly
7 rate when they worked in excess of 8 hours a day or 40 hours a week,
8 and the plaintiffs were not paid such required wages because they
9 were denied any payment whatsoever for certain periods of time that
10 they worked for the defendants and/or because they were not paid
11 overtime wages calculated in compliance with the requirements of
12 Nevada law.

13 20. The defendants' actions in violating NRS § 608.018 were
14 deliberate and repeated, the defendants having in the last five
15 years been subjected to litigation over exactly such practices and
16 despite such litigation and defendants' awareness of the illegality
17 of such practices defendants have willfully continued such
18 practices; defendants will continue to engage in such practices
19 irrespective of an award of damages to the plaintiff class as the
20 defendants profit greatly by such violations of law even after being
21 required to pay damages for such violations of law in repeated
22 litigations; and as a result of such circumstances an award of
23 damages to the plaintiff class would be insufficient relief and the
24 plaintiff class to protect themselves from the ongoing and
25 continuing injury they will otherwise sustain from the defendants'
26 conduct should receive suitable equitable relief, in the form of a
27 preliminary and permanent injunction, the appointment of a limited
28 receiver or Court supervised monitor, and such other appropriate

1 measures of equitable relief as are necessary to insure defendants
2 comply with such statutes.

3 21. The named plaintiff on behalf of herself and the proposed
4 plaintiff class members, seeks, on this Second Claim for Relief, a
5 judgment against defendant for overtime wages, such sums to be
6 determined based upon an accounting of the hours worked by, and
7 wages actually paid to, the plaintiff and those similarly situated,
8 and also seeks an award of attorney's fees, interest and costs, and
9 suitable equitable relief, as provided for by Nevada Law.

10

11 AS AND FOR A THIRD CLAIM FOR RELIEF ON
12 BEHALF OF PLAINTIFF JODI ALLERTON AND
13 ALL PERSONS SIMILARLY SITUATED UNDER
14 NEVADA LAW FOR BREACH OF CONTRACT

15 22. Plaintiff repeats and reiterates each and every allegation
16 previously made herein.

17 23. The named plaintiff brings this third claim for relief for
18 breach of contract under Nevada law.

19 24. The named plaintiff and those similarly situated to her
20 all had contracts of employment with the defendants whereby the
21 defendants agreed to pay such plaintiffs a certain set hourly wage
22 for each hour and fraction thereof that they worked.

23 25. The defendant breached its contract with the plaintiff by
24 failing to pay such promised hourly wages, specifically by failing
25 to pay the plaintiff anything whatsoever for certain hours or
26 portions thereof that she performed work for the defendant.

27 26. The named plaintiff on behalf of himself and the proposed
28 plaintiff class members, seeks, on this Third Claim for Relief, a
judgment against defendant for the unpaid wages owed to the named

1 plaintiff and the plaintiff class members as a result of the
2 defendants' breach of its contract with the named plaintiff and the
3 plaintiff class members, and also seeks an award of attorney's fees,
4 interest and costs, as provided for by Nevada Law.

5 AS AND FOR A THIRD CLAIM FOR RELIEF ON BEHALF OF
6 PLAINTIFF JODI ALLERTON AND ALL PERSONS SIMILARLY
SITUATED UNDER N.R.S. § 608.040.

7 27. Plaintiff repeats and reiterates each and every
8 allegation previously made herein.

9 28. The individual plaintiff, and numerous members of the
10 plaintiff class, prior to the initiation of this litigation, were
11 discharged or resigned from their employment with the defendants and
12 at the time of such discharge or resignation were owed unpaid wages
13 by the defendants.

14 29. The defendants have failed and refused to pay such
15 individual plaintiff and numerous members of the plaintiff class
16 their earned but unpaid wages, such conduct by the defendants
17 constituting a violation of N.R.S. § 608.020, or § 608.030 and
18 giving rise to a claim under N.R.S. § 608.040.

19 30. As a result of the foregoing the individual plaintiff
20 seeks on behalf of themselves and numerous similarly situated
21 members of the plaintiff class, a judgment against the defendants
22 for the penalty prescribed by Nevada Revised Statutes § 608.040, to
23 wit, for a sum equal to up to thirty days wages, along with
24 interest, costs and attorney's fees.

25
26 WHEREFORE, plaintiff demands the relief on each cause of action
27 as alleged aforesaid, together with costs, interest, equitable
28 relief, attorney's fees and such other relief as the Court deems

1 just.

2 Plaintiffs demand a trial by jury on all issues so triable.

3

4 Dated this 12th day of June, 2009.

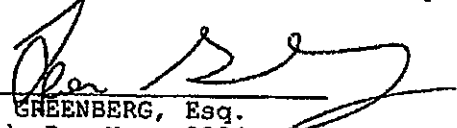
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Leon Greenberg Professional Corporation

7

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By: 
LEON GREENBERG, Esq.
Nevada Bar No.: 8094
633 South 4th Street - Suite 4
Las Vegas, Nevada 89101
(702) 383-6085
Attorney for Plaintiff

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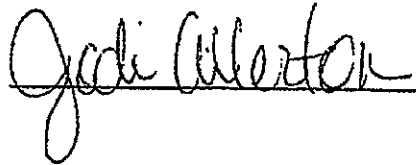
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28

CONSENT TO JOINDER

by signing below, hereby consents to join this case as a
plaintiff pursuant to 29 U.S.C. 216(b).

_____

ORIGINAL

1 **SUMM**

2 Leon Greenberg, NSB 8094
3 A Professional Corporation
4 633 S, 4th St., suite 4
5 Las Vegas, NV 89101
6 702-383-6085
7 Attorney for Plaintiffs

8 **DISTRICT COURT**9 **CLARK COUNTY, NEVADA**

10 JODI ALLERTON, individually and
11 on behalf of all others
12 similarly situated

13 **Plaintiff(s),**14 **-vs-**

15 SPRINT NEXTEL CORPORATION and
16 "John Doe" entities 1 to 25,
17 name and number unknown,

18 **Defendants**A-09592383-C
CASE NO. X

DEPT. NO.

19 **SUMMONS - CIVIL**

20 **NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**
21 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.**
22 **READ THE INFORMATION BELOW.**

23 **TO THE DEFENDANT(S):** A civil Complaint has been filed by the Plaintiff(s) against
24 you for the relief set forth in the Complaint.

- 25 1. If you intend to defend this lawsuit, within 20 days after this Summons
26 is served on you, exclusive of the day of service, you must do the
27 following:

- 28 (a) File with the Clerk of this Court, whose address is shown below, a
formal written response to the Complaint in accordance with the
rules of the Court, with the appropriate filing fee.

SUMM Civil/6/12/2009

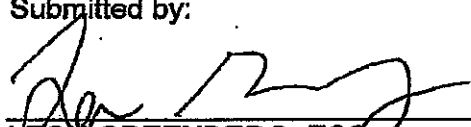
(b) Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted by:


LEON GREENBERG, ESQ.
633 S. 4th Street, Suite 4
Las Vegas, NV 89101
702-383-6085
Attorney for Plaintiffs

CLERK OF THE COURT

By:  MARY ANDERSON
Deputy Clerk JUN 12 2009
Date

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

NOTE: When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure 4(b)

1 **AFFIDAVIT OF SERVICE**2 **STATE OF NEVADA)**

ss:

3 **COUNTY OF CLARK)**

4 John Denaville being duly sworn, says: That at all times herein affiant was and is over
 5 18 years of age, not a party to nor interested in the proceeding in which this affidavit
 6 is made. That affiant received 1 copy(ies) of the Summons and Complaint,
 7 _____ on the 19 day of June, 2009 and served the same on the 22 day
 8 of June, 2009 by:

10 (Affiant must complete the appropriate paragraph)

11 1. Delivering and leaving a copy with the Defendant _____ at (state address)

12 _____
 13 2. Serving the Defendant _____ by personally delivering and leaving a copy with
 14 _____, a person of suitable age and discretion residing at the Defendant's
 15 usual place of abode located at (state address) _____

16 [Use paragraph 3 for service upon agent, completing (a) or (b)]

17 3. Serving the Defendant 1 by personally delivering and leaving a copy at
 18 (state address) CORPORATION SERVICE COMPANY
200 SW 30th Street

19 (a) With _____ as _____, an agent lawfully designated by statute to accept
 20 service of process;

21 (b) With 1, pursuant to NRS 14.020 as a person of suitable age and
 22 discretion at the above address, which address is the address of the
 23 resident agent as shown on the current certificate of designation filed
 24 with the Secretary of State. Served Theresa Burns
Legal Sec.

25 4. Personally depositing a copy in a mail box of the United States Post Office,
 26 enclosed in a sealed envelope, postage prepaid (Check appropriate method):

- 27 ☐ Ordinary mail
 28 ☐ Certified mail, return receipt requested
☐ Registered mail, return receipt requested

1 addressed to the Defendant _____ at Defendant's last known address which
2 is

3 (state address) _____
4

5 I declare under penalty of perjury under the law of the State of Nevada that the
6 foregoing is true and correct.

7 EXECUTED this 22 day of June 20 09.
8
9

10 J.F. Donnelly
11 Signature of person making service

12 John F. Donnelly
13 AMPAST Delivery
14 3900 SW 40TH TERR
15 Topeka, KS 66610
16 / 785-249-2358
17
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EXHIBIT 2

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

----- X
JODI ALLERTON, Individually and on behalf of : No. _____
others similarly situated, :
 : **ECF CASE**
 :
Plaintiffs, :
 :
 :
against : Eighth Judicial District Court of
 : Nevada,
 : Clark County
SPRINT NEXTEL CORPORATION and JOHN : Case No. A-09-592383-C
DOES I through XXX, actual names and number :
unknown, :
 :
Defendants.
----- X

AFFIDAVIT OF TAYLOR KITCHIN

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

Taylor Kitchin deposes and says under penalty of perjury:

1. I am Taylor Kitchin, a Human Resource Manager for Sprint Nextel Corporation. The facts set forth herein are true based on my personal knowledge of the records available to me as they are kept in the ordinary course of business, my general knowledge of the business practices of Sprint, and information provided to me by persons upon whom I regularly rely in the course of my duties.
2. Plaintiff Jodi Allerton ("Allerton") was employed by Sprint from November 5, 2007 through March 12, 2009.
3. Upon her departure from Sprint, Allerton's hourly wage was \$12.8625.

4. During her employment with Sprint, Allerton worked, on average, 42.88 hours per week, including paid time off.

Sworn to before me this 26 day of July 2009.


Notary Public

